

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NICHOLAS WILLIAMS and
JAMES SARATA,

Plaintiffs,

Case No. 04-CV-71950

vs.

HON. GEORGE CARAM STEEH

MICHIGAN STATE TROOPERS
CALDWELL et al.,

Defendants.

/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO
DISMISS (DOCUMENT # 22)

In this case, stemming from the arrest of plaintiffs by defendants, plaintiffs claim violations of the fourth and fourteenth amendments under 42 U.S.C. § 1983 and also make claims under state law. Defendants filed a motion to dismiss plaintiffs' fourteenth amendment and state law claims, to which a response has been filed by plaintiffs. The parties waived oral argument on the motion.

Defendants' motion first asserts that the constitutional claims brought by plaintiffs in Count III, alleging the use of excessive force in the course of plaintiffs' arrest, may be brought and evaluated only under a fourth amendment "objective reasonableness" standard, and may not be brought or evaluated under the fourteenth amendment, citing Graham v. Connor, 490 U.S. 386, 394-95 (1989). See also Phelps v. Coy, 286 F.3d 295, 299 (6th Cir. 2002). In their response brief, plaintiffs have stipulated "that any and all of the facts and circumstances giving rise to Plaintiffs' claims set forth in Count III of

Plaintiffs' Complaint are analyzed under the 4th Amendment "reasonableness" standard." For this reason, defendants' motion to dismiss is granted as to plaintiffs' fourteenth amendment claims, and the complaint shall be amended to state excessive force claims only under the fourth amendment.

The balance of defendants' motion requests the court's dismissal of the state law claims. Because constitutional claims remain pending in this lawsuit, over which the state law claims do not predominate, and because novel issues of state law have not been raised by Counts I, II, or IV, the court finds that dismissal of those claims is neither appropriate under 28 U.S.C. § 1367 nor desirable for purposes of judicial economy.

For the reasons given above, defendants' motion to dismiss is hereby GRANTED IN PART and DENIED IN PART. Plaintiffs shall file an amended complaint, reflecting dismissal of the fourteenth amendment claims, within 21 days of this order.

IT IS SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: April 21, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on April 21, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk